

R. E. HIBBERT

IBLA 71-95

Decided December 12, 1972

Appeal from decision (Wyoming 043047) of Land Office, Cheyenne, Wyoming, Bureau of Land Management, holding oil and gas lease to have terminated.

Affirmed as modified.

Oil and Gas Leases: Production -- Oil and Gas Leases: Termination

A lease which is in its extended term because of production terminates upon cessation of production if reworking or drilling operations are not commenced upon the leasehold within 60 days thereafter and conducted with reasonable diligence during the period of nonproduction.

Administrative Practice -- Federal Employees and Officers: Generally -- Federal Employees and Officers: Authority to Bind Government -- Oil and Gas Leases: Production

Where the appropriate State agency approves abandonment of a well as of a date certain, marking the cessation of production, and a federal employee later notifies a person interested in the oil and gas lease that he has 60 days from a later date, erroneously construed by such employee to be the date of such cessation, within which to commence drilling or reworking operations, such notification will not be construed as creating any rights.

APPEARANCES: Charles A. Redpath, Jr., Esq., of Denver, Colorado, for appellant.

OPINION BY MR. FISHMAN

R. E. Hibbert, a holder of operating rights of oil and gas lease, Wyoming 043047, held by U.S. Natural Resources, Inc., has appealed from a decision, dated November 4, 1970, rendered by the Bureau of Land Management Land Office at Cheyenne, Wyoming, holding that the lease terminated as of midnight October 14, 1969.

The decision below recited in part:

* * * On October 14, 1969, while the lease was in its extended term because of production, it was determined that the lease was no longer capable of producing oil or gas in paying quantities. No approved operations to restore such paying production on the lease were commenced within sixty days thereafter, as allowed under regulation 43 CFR 3107.3-1.

Appellant seeks to invoke 43 CFR 3127.5 (1970), now 43 CFR 3107.5 (1972), which reads as follows:

Any lease eliminated from any approved or prescribed cooperative or unit plan or from any communitization or drilling agreement authorized by the act, and any lease in effect at the termination of such plan or agreement, unless relinquished, shall continue in effect for the original term of the lease, or for 2 years after its elimination from the plan or agreement or the termination thereof, whichever is the longer, and so long thereafter as oil or gas is produced in paying quantities.

The record shows that the oil and gas lease in issue was, in part, included in communitization agreement NW-207, approved on January 11, 1968, which agreement terminated on October 14, 1969.

The regulation governing the disposition of this appeal is 43 CFR 3107.3-1 (1972), which reads as follows:

§ 3107.3-1 Cessation of production.

A lease which is in its extended term because of production shall not terminate upon cessation of production if, within 60 days thereafter, reworking or drilling operations on the leasehold are commenced and are thereafter conducted with reasonable diligence during the period of nonproduction.

The Geological Survey has informed us that approval to abandon the communitized well (on private land) was granted by the appropriate State agency on June 11, 1969. This is the date which at the latest, marked the cessation of production with respect to the lease in issue. Therefore, under the quoted regulation, appellant had 60 days, i.e., until August 10, 1969, within which to commence reworking or drilling operations. His failure to do so terminated the lease. Although he

was given 60 days for such action by the Geological Survey District Engineer's letter of October 3, 1969, this letter could not resuscitate the lease. See Alaska District Council of the Assemblies of God, Inc., 8 IBLA 153 (1972); Hiko Bell Mining and Oil Company, 6 IBLA 8 (1972); Mark Systems, Inc., 5 IBLA 257 (1972). Accordingly, the lease is properly held to have terminated 1/ as of June 11, 1969, the date it was determined to be no longer capable of producing oil or gas in paying quantities. E. W. McGlothlin, A-30392 (September 15, 1965).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals, by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Fredrick Fishman, Member

We concur:

Edward W. Stuebing, Member

Douglas E. Henriques, Member.

1/ We note that even if the appeal were deemed meritorious, the requested period of extension under the statute, 30 U.S.C. § 226(i) (1970) would have terminated on October 13, 1971, two years from the termination of the communitization agreement. 43 CFR 3127.5 (1970), now 43 CFR 3107.5 (1972). But cf. Joseph I. O'Neill, Jr., Mobil Oil Corporation, 77 I.D. 181, 186 (1970), in which a two-year extension from the date of the appellate decision was granted.

